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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,210	11/02/2001	Phillip J. Heil	64,842-004	9142
26127	7590	03/21/2005	EXAMINER	
DYKEMA GOSSETT PLLC 39577 WOODWARD AVENUE SUITE 300 BLOOMFIELD HILLS, MI 48304-5086			VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/000,210

Applicant(s)

HEIL ET AL.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 11-14, 16-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 11-14, 16-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **Status of Application**

1. Applicant's amendment, filed Dec. 6, 2004, has been entered in the application. Claims 1-7, 11-14, 16-18, 20 and 21 are pending, claims 20 and 21 having been added, claims 8-10, 15 and 19 having been canceled.

### **Claim Rejections - 35 USC 102**

2. The portions of 35 USC 102 relied upon herein may be found in a previous office action

3. Claims 1, 2, 11 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by

Schrempf (US 6,412,799 B1, filed 6/2000). Schrempf teaches a running board for an automobile, comprising a polymeric (see col. 3, lines 63-67) plastic integrally molded unit, having a planar top platform (14) for extending along the side of a vehicle, and plural spaced apart J-shaped brackets (30/24) with upper ends for connection to the vehicle (through 40) and lower ends integral with the running board, the platform supported by reinforcing webbing (e.g., 64, 72) underneath, some of which are transverse to the length of the board and perpendicular to the upper surface (e.g., 64), and some of the transverse webs being extensions of the bracket portions (64 extending from 54, also 52), and longitudinal webs which are oriented at an angle (figure 8) to the upper surface, wherein the bracket sidewalls have an increasing thickness (e.g., element 52, see figure 8) extending from the bracket end to the board portion.

### **Claim Rejections - 35 USC 103**

4. The portions of 35 USC 103 relied upon herein may be found in a previous office action

5. Claims 3-7, 12-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schrempf. Schrempf teaches a running board for an automobile, comprising a polymeric (see col. 3, lines 63-67) plastic integrally molded unit having a planar top platform (14) for extending along the side of a vehicle, and plural spaced apart J-shaped brackets (30/24) with upper ends for connection to the vehicle (through 40) and lower ends integral with the running board, the platform supported by

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reinforcing webbing (e.g., 64, 72) underneath, some of which are transverse to the length of the board and perpendicular to the upper surface (e.g., 64), and some of the transverse webs being extensions of the bracket portions (64 extending from 54, also 52), and longitudinal webs which are oriented at an angle (figure 8) to the upper surface, the brackets having a pair of channels (e.g., channels 26 between 58, 52), which are oriented to open toward the vehicle portion to which they are attached (back face of 30). Schrempf fails to teach the plastic material as being specifically polypropylene, having long length, at least 12 mm., fiber reinforcements therein. The use of polypropylene is old and well known in the plastics arts, as a thermoplastic material capable of easy use in manufacturing environments, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the board from polypropylene for the purpose of facilitating ease of manufacture. In that long length glass fibers are additionally well known as a reinforcement, it would have been obvious to one of ordinary skill in the art at the time of the invention to use long-length glass fibers in the board material for the purpose of strengthening the board, thus assuring that it will be sufficiently strong to withstand everyday wear and tear associated with the operation of a vehicle. Note that Schrempf does envision the use of a reinforcing filler at col. 3, lines 63-67. Schrempf fails to teach the brackets as including a third channel element with outer channels being of greater width than an inner channel. In that no unexpected results have been indicated as accompanying this structure, and in that it is deemed to be within the skill of the ordinary practitioner to provide a greater number of a given taught element to enhance the function which that element provides, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide three channels rather than two to the brackets taught by Schrempf by providing a further web element (dividing between the channels), for the purpose of further strengthening the brackets against bending. As regards the relative widths of the channels, it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the relative widths of the channels taught by Schrempf as further modified, for the purpose of adjusting the stress distribution of the attachment brackets,

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or to provide a larger ground or bearing face against which the head of a fastener (through aperture 40) may rest.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schrempf (cited above) in view of Alldredge (US 4,696,507). The reference to Schrempf is discussed in detail above and fails to specifically teach the running board including a sidewall with an aperture therein to facilitate drainage. Alldredge teaches a running board (30) for a vehicle (10), wherein proximate a side-wall (e.g., at the intersection of side wall portion 74 and bracket 24) an aperture is provided for allowing drainage (note figure 5, for example). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the running board taught by Schrempf with at least one aperture proximate a side wall portion thereof, as taught by Alldredge, for the purpose of preventing the accumulation of water on the running board.

#### **Response to comments**

7. Applicant's comments, directed to the amendment, have been carefully considered. Applicant's comments concerning the brackets being metallic are noted, but not supported by any factual showing. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Applicant is specifically and explicitly invited herein to explain where the reference to Schrempf positively discloses the bracket element as being metallic. In view of (1) Schrempf's teachings that the board is made from a plastic polymer, (2) that the bracket may be integral with the board as specifically pointed out at col. 2, lines 57-58, and (3) there being no teaching that the bracket is made from another material, applicant's arguments are unpersuasive.

#### Limitations not in the claims:

Applicant's comments concerning a transverse weld are noted, however these limitations do not appear to be recited in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

#### As regards reading unclaimed limitations from the specification into the claims:

From MPEP 2111:

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During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

### Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

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A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326  
After Final Amendments: 703-872-9327  
Customer Service Communications: 703-872-9325

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**F. VANAMAN**  
Primary Examiner  
Art Unit 3618

  
3/14/05